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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KEVIN GAMBLE, 00-A-6625,

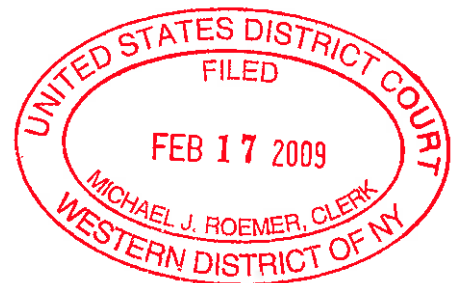
Plaintiff,

-v-

DECISION AND ORDER
07-CV-6458CJS (Fe)

KATHY FELKER,
MR. NAPOLI,
MS. ALLEN,
MR. HALUSKA,
MS. DIANE WEED,
MS. WALSH,
SERGEANT SILVER,
OFFICER PATRICK MAYNARD,
OFFICER A. BABBIE,
OFFICER S. MILLER,
OFFICER DONAH, and
OFFICER T. ALLEN,

Defendants.



Plaintiff is an inmate proceeding *pro se* and granted permission to proceed *in forma pauperis*. By Order dated December 27, 2007, service was directed on the named defendants in the caption above. The U. S. Marshal filed reports demonstrating that service was executed on Officer A. Babbie, Officer S. Miller, Officer T. Allen, Officer Donah, Sergeant Silver and Officer Patrick Maynard. Counsel for Defendants filed a motion to dismiss on entered behalf of Officer Miller, Officer T. Allen, Mr. Napoli, Mr. Haluska and Ms. Walsh (Docket Nos. 6 -8). Subsequent papers have been filed by counsel on behalf of these defendants as well.

A. Service on Unserved Defendants

Thus, the only remaining defendants for whom service had not been established are Kathy Felker and Ms. Diane Weed. The time for serving these defendants is hereby extended for 120 days from this Order. The U. S. Marshal is directed to again serve the Summons and Complaint, together with this Order, on Kathy Felker and Diane Weed. The defendants are directed to Answer.

Further, the Court requests that the Attorney General ascertain proper addresses for any unserved defendants by **March 16, 2009**, pursuant to Valentin v. Dinkins, 121 F.3d 72 (2d. Cir. 1997) (per curiam).¹ Once this information is provided amended summonses shall be issued and the Court shall direct service on the identified defendants.

B. Failure of Served Defendants to Respond

The U. S. Marshal has filed proof of service with respect to Officer A. Babbie, Officer Donah, Sergeant Silver and Officer Patrick Maynard, but these defendants have not filed an Answer or other responsive pleadings. Counsel for the defendants has not filed a Notice of Appearance with respect to these defendants. Accordingly, the Court directs that these defendants respond to this Order with any reasons why Clerk's Entry of Default should not

¹The Attorney General need not undertake to defend or indemnify these individuals at this juncture. This order merely provides a means by which plaintiff may name and properly serve the defendants as instructed by the Second Circuit in Valentin.

be entered against them. The Clerk of the Court is directed to mail a copy of this Order to these defendants at the address where they were served.

C. Status Conference

The scheduling conference was adjourned pending the decision on the Motion to Dismiss, filed on behalf of some of the defendants. The motion was denied on October 1, 2008, but no further responsive pleadings have been filed by the defendants. Nevertheless, the Court directs that the parties appear for a status conference in chambers on **April 1, 2009 at 9:30 a.m.**; plaintiff appearing via telephone conference call. Further scheduling on this action will be determined on that date.

ORDER

IT IS HEREBY ORDERED that the time for serving the unserved defendants is extended for 120 days from the filing of this Order;

FURTHER, that The U. S. Marshal is directed to again serve the Summons and Complaint, together with this Order, on Kathy Felker and Diane Weed;

FURTHER, that the Attorney General ascertain proper addresses for any unserved defendants by **March 16, 2009**, pursuant to Valentin v. Dinkins, 121 F.3d 72 (2d. Cir. 1997) (per curiam);

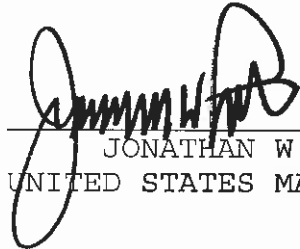
FURTHER, that all of the defendants are directed to Answer;

FURTHER, that Officer A. Babbie, Officer Donah, Sergeant Silver and Officer Patrick Maynard are directed to respond to this

Order by March 16, 2009 with any reasons why there should not be a Clerk's Entry of Default; and

FURTHER, that the parties are directed to appear for a status conference on **April 1, 2009**, with plaintiff appearing via telephone conference call.

IT IS SO ORDERED.



JONATHAN W. FELDMAN
UNITED STATES MAGISTRATE JUDGE

Dated: February 17, 2009
Rochester, New York